2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak RQ2

428 to keep the shares of all sons as nearly equal as possible. If the father had not already negotiated for wives for his sons, the first necessity was to assure to each a sufficient competency in animals to pay the bride price. This requirement frequently absorbed the major part of the estate.

The division among the older sons having taken place, the remainder after the death of the father passed to the youngest son. He inherited also the kibitka of his father and the winter dwelling, although if the father had not had the means to provide the other sons with their own houses for winter they might continue to live with the youngest son in the house he had inherited.[59]

[583] A daughter did not normally inherit, but among the wealthier families received on her marriage a dowry which was, theoretically at least, held in trust for her by her husband.[60]

A daughter might also be considered in herself a valuable part of the inheritance in anticipation of the bride price which might later be received on her marriage. This potential income, especially in poor families where there was little actual property to divide, might be of great importance, and the sons, if there were nothing else, would apportion among themselves the bride price received for their sisters.[61]

[429] [587] If a father died while his children were still minors his estate would be held in trust for them until they came of age by his brother, who, under the levirate, would normally marry the widow. That this guardianship was not without its perquisites is indicated by Grodekov's remark[62] that, "Upon coming of age the heir may overlook the embezzlement of his portion."

According to Levshin[63] careful husbands kept separate from their own possessions the dowries of their wives, since the wife's property was inherited by her own children alone and not by other children of her husband. I am not sure that this was usually the case. My informants were inclined to think that most husbands were not over-scrupulous about annexing their wives' dowries to their own property.

If a man died childless, his widow or widows, according to my information, would inherit. If there were more than one, the largest share went to the senior wife, in priority of marriage, and smaller shares to the junior wives. The actual division was determined [587] by the aqsaqal.[1] A widow marrying again retained the property which she had inherited. It did not pass to her new husband, although normally she would be expected to marry his younger brother, in which case it would remain in the family.

[597] Adoption might take place in order to acquire an heir. According to Tlenshiev, if a man died leaving only an elderly widow and no children she might adopt a son from another family in the uru, probably a son of the deceased husband's brother, who would be formally considered as her son and would inherit the property of her husband after her death.

[59] See also Radlov, *Aus Sibirien*, 1: 416.
[60] See also Levshin, *Description des hordes*, 364.
[61] Dingelstedt, *Le Droit coutumier*, 153–54.
[62] *Kirgizy i Kara-kirgizy*, 40.
[63] *Description des hordes*, 363.

1 [leader of uru -- Analyst]

576 Did your father die?" They also avoid calling someone from a distance.

/12/ CHAPTER II.

The clan principle. - Custom

618 The enormous importance of the clan principle (1) stems from

1. On the clan origin as the most ancient stage of social development of all peoples, cf. Pervobytnoe Pravo /Primitive Law/ by Makim Kovalevskii, Moscow, 1886, Pt. 1. Clan.

[695] the law of force: the individual finds defence only in his clan. The clan answers for his transgressions. The propitiatory oath is imposed not on the responsible individual but on another person from his clan. (2)

2. Hence a man without a clan or a musafir always risks losing a case, being unable to procure his kinsmen to take the oath.

[672] The exaction of payment is also received not by the person but by
[628] the clan. When wergeld is not paid, not necessarily the murderer,
[587] but any person from his clan is killed. A bride belongs not to a
[429] person but to a clan. A widow goes to the nearest relative of the deceased, and a divorced woman must choose a new husband from the clan of her former husband. The nearest kinsman is always the guardian. Guests are received according to their degree of kinship.

The bearers of the clan principle are the rich men and the senior elders (aksakals). (3) Beyond the names of their direct ancestors and

3. Among the Sarts the aksakal is an administrative figure- a village elder. Among the Kazakhs he is the person in a given place who has the highest authority by blood.

their clan and lineage, the poor know nothing of the distant branches of their kin.

The volost administrators elected by the people retain their posts only when they belong to the strongest clan in the volost.

The decline of the clan principle is marked by frequent litiga-

597 Touching the breast of the adoptive mother is a symbol that she considers the adopted one on an equal with her own children, whom she nursed, although she did not nurse him.

The adopted one is usually not considered as close as the true child, although he may gain more affection than the true children by his spiritual qualities and his services. The same can be said of adopted slaves.

When they wish to reject the adopted one, they give him an allotment only of inchi or only of kalym. In extreme cases it is enough to give him a horse for his departure. On the request of the adopted one, the aksakas may request the father not to reject his foster child without a serious offense (Perovsk uyezd). The adopted one, on his part, can always go away to his clan at any time.

The clan does not change through adoption, at any rate not now.

[582] According to the report of E. A. Aleksandrov, the adopted child (inchiles bala), coming from a clan and lineage with which marriage is permissible, can under no circumstances enter into marriage with those who have adopted him. This includes not only the family, but also the close relatives of this family. He is considered as a true son of the adopter and has a right to the name and the inheritance on an equal with the lawful children.

• • • •

429 After the death of the father, even though the mother is living, one of the close kinsmen takes the place of the father for the protection of the orphans (yetim), and the wards nomadize together with him.

This guardianship is not juridical but patriarchal, for which reason also there are rarely used words signifying the guardian: miraskhur, miras, mira(1), and according to Daulet Bushaev - vasy.

1. On hearing the word "mirasy" meaning "his guardian" they took the sy for a suffix and began to use "mira". Actually, the Arabic miras means inheritance, and miraskhur, the receiver of the inheritance. Among the Kazakhs these same words have received the meaning of guardian.

/39/ If no one remains alive in the tent but the successor, who is not of age, then he moves with all his property to the nearest kinsman (Perovsk uyezd). To this last kinsman other kinsmen come

and take what they need of the orphan's property, saying "when you eat (1) why shouldn't I eat?" (sen yegende men yemeyminbe?)(Torgai). 429

1. To eat is the equivalent of to use.

Only when the closest kinsman is completely unsuitable to be a guardian, then by demand of the remaining relatives, a bii or aksakal appoints another, if possible a close kinsman, or to speak more precisely, they do not appoint but give the minor into his hands.

In the absence of men, a woman is invited to be the guardian, the mother or a close kinswoman, for although women are bought by a kalym, in likeness to property, and although oaths are not sworn from the woman's side, it is not denied that they have a mind (akl), or otherwise they would not be allowed to give testimony in court. When male relatives are not to be found, women are themselves considered guardians. Outside aksakals are invited to be guardians only in the most extreme cases. In general, the guardian is usually of a relationship no further than the seventh degree.

Also the very close kinsman of the killed man, who presents the claim for the wergeld, or he who defends the rights of the deceased when there is no very close kinsman, and takes his place, is designated as guardian.

When the mother marries a kinsman of her dead husband, the children remain with her. But when the mother goes to a new husband of a strange clan, then the children remain under the guardianship of the former relatives.

The insane, cripples, etc., are not deprived of their property. Their closest kinsmen are considered their guardians. Even though they cannot earn their own subsistence, they are given wives without breaking the rule that the sons are married in order of seniority.

/40/ For minor sons (up to 15 years approximately), their guardians intercede on their behalf.

A girl must have the consent of her guardian to marry, if he is a kinsman. If he is not, she must have the consent of her closest kinsman. The guardian who is not a kinsman can only advise his ward, the groom or the bride, to defer the payment of the kalym until the spring when the number of livestock is doubled. The nearest relative can refuse his consent to a marriage which is desired by the guardian and the children themselves. The guardian is not forbidden to marry his female ward, with the observation of the usual rules. For example, when he is a close kinsman, he cannot marry within the forbidden 429 582

429 [582] degree, and must pay the relatives of the bride a "relative" rodstvennyi/ kalym (ru kalyn mal).

The customary law leaves the guardian all the profits of an uncontrolled management of the property, as a relative, and in view of his cares in the guardianship. When he comes of age, the heir can request the return of a part of it.

• • • •

572 When promising to be a friend (tamyr, kyyamatty dos), something is given. The person who receives the gift is obliged to give a gift in return of equal value. The tamyrs alternately travel to each other and make a selection (kalau) from the livestock and nice things. The object chosen must be given and cannot be refused. In ancient times, complaints of not receiving a return gift of equal value were not customary. Now the biis calculate out in terms of money the sum of the value of all the gifts from both sides and compel the payment of the difference (the books of the biis of the Perovsk uyezd, bii Abdrakhman of the Auliye-Ata uyezd). However a court examination between blood brothers does not make a good appearance. The bii admonishes them: "Satisfy the desire (razykyl) of your tamyr. Afterwards you will go to him and he will satisfy your desire."

[608] Blood brotherhood consists in one friend's staying at another's during his departure, to be as though in his own home, and to borrow necessary things and livestock, though not otherwise than /41/ with the consent of the householder, his wife, or another of the household who knows of the existence of the blood brotherhood. At weddings, funerals and similar gatherings they also give each other gifts.

Blood brotherhood is also concluded between girls. It is also possible between different sexes. In the latter case, the term kyyamattik is used less, and tamyrmyk is more common.

For centuries friend has been called kyyamatti dos, dostamyr, dos. According to Torgai, things can be taken from a dos without permission, while with a simple tamyr it is necessary to ask. According to bii Sultan, the dos promise before God not to sue each other about their mutual accounts (bir biri mizdan berib alyskany myzny khudanyng aldynda suramaymyz).

According to Daulet Bushaev, eternal friendship is agreed upon on the Koran. According to Makovetskii (I, p. 45), it is

586 among the relatives. The groom's father is the first to give to the contribution. This property remains with the husband in the case of divorce.

According to Umurbek, the children of divorced parents remain with the father, but an amicable agreement can be reached
587 and the young ones granted to the mother. According to Mikebai,
429 often the relatives will not permit a minor son to go to the new husband of the widow. A grown son has freedom of choice. The first of the daughters always goes with the mother, and the others remain with the successors. Now, however, the daughters too have the right to give consent or not.

Among the Kirgiz, Kurpetai Daulekulov reports that the sons and daughters remain with the father's relatives after his death. If there are several daughters the biis may allot the youngest one to the mother. According to the report of the Kirgiz Daniyar, a widow who marries a close kinsman of her husband, takes property with her and a young son. But if she marries a strange man she receives neither property nor the son, and the kalym which comes for her goes to the brothers of the deceased and in part for the use of her children. A divorced woman also fails to receive property or her son.

182 If the step-father is killed, the step-son does not have the
593 right to claim wergeld. Likewise if the step-son is killed, the step-father has no right to demand wergeld. The wergeld is demanded by the closest kinsmen, and the step-father or the step-son can only receive a reward for the expenses born by them for the burial. The step-father has a right to demand wergeld for his own use for a killed step-son only if there are no other kinsmen.

593 /93/ The wife does the work her husband directs her to do.
562 She is not allowed to argue (erkbermeymiz). In the absence of the husband the wife feeds herself from his livestock. Even if there are no means of life for a long time, she still cannot marry another because of this.

593 There is no obstacle preventing a husband who is absent for
562 a long time from entrusting or reconveying his wife to another. Only
837 the latter is not customary. (1)

1. According to Makovetskii, I.P. 24, this happens: "the biis refuse a husband who claims the wife who has been sold."

Only daughters given to ishans as a gift (nazyr), not wives.

[Great Horde]

429 The mother was the guardian of the children until they came of age. Failing a man's widow as guardian of his surviving children, the closest agnatic kin took over the guardianship of the minor children. These were apportioned equally when they reached their majority, the youngest son possibly getting a slightly larger proportion of the entire estate. The trustee in this case took charge of the entire estate until it was apportioned. A daughter did not participate in the apportionment, she
428 was entitled only to her dowry.[113] In point of fact, however, these rigid rules did not always work out purely. We have one case in which a daughter participated in the division of the parental estate to a greater extent than the mere apportionment of the dowry. The son in this case inherited thirty horses, 300 sheep, five cattle, five camels, and a yurt with its furnishings; the daughter received 100 sheep and valuables worth 100 rubles,[114] a portion greater than a typical dowry, but less than a full share in the estate.

Where equal provision was not made, other factors, such as favoritism may have been brought to bear. In any case, no Kazakh died without society making provision for the apportionment of his heirs: succession ab intestat was

---

[113] Izraztsov, 4; Lingelstedt, 153.

[114] Izraztsov, 70.